

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

DWAYNE J. FERGUSON, JR.,
Alien No. A087-039-665,

Petitioner,

v.

MARY SABOL, Warden, York
County Correctional Facility,

Respondent.

CIVIL ACTION NO. 1:16-cv-01914

(KANE, J.)
(SAPORITO, M.J.)

REPORT AND RECOMMENDATION

On September 17, 2016, the petitioner, appearing through counsel, filed a petition for a writ of habeas corpus submitted pursuant to 28 U.S.C. § 2241. (Doc. 1). In this petition, Ferguson, a native and citizen of the Bahamas, challenged the legality of his extended post-removal detention. At the time of filing, Ferguson was being held in the custody of United States Immigration and Customs Enforcement at York County Prison, located in York County, Pennsylvania.

On December 7, 2016, the petitioner filed a motion to voluntarily dismiss his petition pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure. (Doc. 11). In these motion papers, counsel for the petitioner advised that Ferguson has been physically removed from the United

States. (*Id.*). The respondent has filed a notice concurring in the motion. (Doc. 12). Because Ferguson “has already been deported and is, therefore, no longer in custody, the challenge to [his] detention is moot and the habeas petition must be dismissed.” *Lindaastutty v. Att'y Gen.*, 186 Fed. App’x 294, 298 (3d Cir. 2006); *Audain v. Decker*, No. 3:12-CV-02301, 2013 WL 5656128, at *2 (M.D. Pa. Oct. 15, 2013).

Based on the foregoing, it is recommended that the petitioner’s motion to voluntarily dismiss his petition (Doc. 11) be **GRANTED**, the petition (Doc. 1) be **DISMISSED AS MOOT**, and the case be closed.

Dated: December 9, 2016

s/ Joseph F. Saporito, Jr.
JOSEPH F. SAPORITO, JR.
United States Magistrate Judge

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NOTICE

NOTICE IS HEREBY GIVEN that the undersigned has entered the foregoing Report and Recommendation dated December 9, 2016. Any party may obtain a review of the Report and Recommendation pursuant to Local Rule 72.3, which provides:

Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. § 636(b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within fourteen (14) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a de novo determination of those

portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

Dated: December 9, 2016

s/ Joseph F. Saporito, Jr.
JOSEPH F. Saporito, Jr.
United States Magistrate Judge